

AN ACT MAKING APPROPRIATIONS FOR FISCAL YEAR 2003
TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND
FOR CERTAIN OTHER ACTIVITIES AND PROJECTS.

To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2003, the sums set forth in section 2 are hereby appropriated from the General Fund unless specifically designated otherwise herein or in said appropriation acts, for the several purposes and subject to the conditions specified herein or in said appropriation acts, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2003, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items.

SECTION 2.

JUDICIARY.

Commission on Judicial Conduct.

0321-0001\$112,500

Committee for Public Counsel Services.

0321-1510\$6,609,392

0321-1512\$5,258,481

0321-1520\$4,427,580

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

Human Resources Division.

1750-0119\$44,116

1750-0300\$1,133,744

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES.

Division of Medical Assistance.

4000-0500\$10,531,701

Department of Transitional Assistance.

4403-2120\$2,000,000

EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION.

Office of the Secretary of Transportation and Construction.

6005-0015\$5,555,806

SECTION 2A. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth herein are hereby appropriated from the General Fund unless specifically designated otherwise herein, for the several purposes and subject to the conditions specified herein, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June 30, 2003, provided that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items.

OFFICE OF THE COMPTROLLER.

1599-3384 For a reserve for the payment of certain court judgments, settlements and legal fees, in accordance with regulations promulgated by the comptroller, which were ordered to be paid in fiscal year 2003 or a prior fiscal year; provided, that the comptroller shall report quarterly to the house and senate committees on ways and means on the amounts expended from this item; and provided further, that the comptroller may transfer funds from this item to the liability management and reduction fund pursuant to section 2TT of chapter 29 of the General Laws\$8,100,000

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

Office of the Secretary of Administration and Finance.

1599-4148 For the commonwealth's share of the costs associated with training and skills development pursuant to sections 3 and 4 of article 20 of the agreement between the commonwealth and the State Police Association of Massachusetts, as amended by the memorandum of agreement signed July 12, 2001; provided, that this appropriation shall expire on June 30, 2004.....\$200,278

SECTION 2B. To provide for supplementing certain intragovernmental chargeback authorizations in the general appropriation act and other appropriation acts for fiscal year 2003, to provide for certain unanticipated intragovernmental chargeback authorizations, to provide for an alteration of purpose for current intragovernmental chargeback authorizations, and to meet certain requirements of law, the sums set forth herein are hereby authorized from the Intragovernmental Service Fund for the several purposes specified herein or in said appropriation acts, and subject to the provisions of law regulating the disbursement of public funds for the fiscal year ending June

30, 2003; provided, that said sums shall be in addition to any amounts previously authorized and made available for the purposes of said items.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

Bureau of State Office Buildings.

1102-3336\$350,000

Information Technology Division.

1790-0200\$1,000,000

SECTION 3. Section 2EEE of chapter 29 of the General Laws, as inserted by section 40 of chapter 184 of the acts of 2002, is hereby amended by inserting at the end thereof the following:—

Notwithstanding the provisions of any general or special law to the contrary, the comptroller shall certify payments, including payments during the accounts payable period, in anticipation of revenues, including receivables due and collectibles during the months of July and August, from the fund for the purpose of making the expenditures authorized under said sections 25 and 26 and any other special act.

SECTION 4. Section 3 of chapter 29D of the General Laws, as amended, is hereby amended by striking subsection (b).

SECTION 5. Sections 61A and 61B of chapter 31, and section 5A of chapter 32 of the General Laws, as appearing in the 2000 Official Edition, are hereby repealed.

SECTION 6. Chapter 62C of the General Laws, as so appearing, is hereby amended by inserting, after section 3, the following:—

Section 3B. In applying the statutes referred to in section 2, the commissioner may, in his discretion, disallow the asserted tax consequences of any transaction by asserting the application of the sham transaction doctrine or any other related tax doctrine, in which case the taxpayer shall have the burden of demonstrating by clear and convincing evidence that the transaction possessed both (i) a valid, good-faith business purpose other than tax avoidance; and (ii) economic substance apart from the asserted tax benefit. In all such cases, the taxpayer shall have also the

burden of demonstrating by clear and convincing evidence that the asserted non-tax business purpose is commensurate with the tax benefit claimed. Nothing in this section shall be construed to in any way limit or negate the commissioner's authority to make tax adjustments as otherwise permitted under other provisions of tax law.

SECTION 7. Section 1 of chapter 63 of the General Laws, as so appearing, is hereby amended by inserting after the word "year", on line 158, the following:– The term dividends received is treated in the same manner as under the provisions of the Internal Revenue Code, as amended and in effect for the taxable year. For purposes of this section, any dividend received from a real estate investment trust, as provided under sections 856 through 859, inclusive, of the Internal Revenue Code, for the taxable year of the trust in which the dividend is paid, shall not be treated as a dividend.

SECTION 8. Paragraph 4 of section 30 of said chapter 63, as so appearing, is hereby amended by inserting after the second sentence, the following:– For purposes of this section, any dividend received from a real estate investment trust, as provided under sections 856 through 859, inclusive, of the Internal Revenue Code, for the taxable year of the trust in which the dividend is paid shall not be: (i) treated as a dividend, and (ii) included as part of the dividends received deduction otherwise available to the taxpayer under the provisions of paragraph (1) of subsection (a) of section 38 of this chapter.

SECTION 9. Said paragraph 4 of said section 30 of said chapter 63, as so appearing, is hereby further amended by inserting, after subparagraph (iii), the following subparagraph:– (iv) interest expense paid, accrued or asserted in connection with a dividend of a note or similar obligation stating the requirement that such interest is to be paid by the corporation that dividends said obligation to its shareholders.

SECTION 10. Said chapter 63, as so appearing, is hereby further amended by inserting after section 31H the following sections:–

Section 31J. (a) As used in this section the following words shall, unless the context requires otherwise requires, have the following meaning: "Code", the federal Internal Revenue Code as amended and in effect for the taxable year.

"Intangible expenses and costs", includes (1) expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deductions and special deductions for the taxable year under the Code; (2) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (3) royalty, patent, technical and copyright fees; (4) licensing fees; and (5) other similar expenses and costs.

"Intangible property", patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

"Interest expenses and costs", amounts directly or indirectly allowed as deductions under section 163 of the Code for purposes of determining taxable income under the Code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property.

"Related member", a person that, with respect to the taxpayer during all or any portion of the taxable year, is: (1) a related entity, (2) a component member as defined in subsection (b) of section 1563 of the Code; (3) a person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the Code; or (4) a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (1) through (3) of this definition.

"Related entity", (1) a stockholder who is an individual, or a member of the stockholder's family enumerated in section 318 of the Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at

least 50 per cent of the value of the taxpayer's outstanding stock; (2) a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 per cent of the value of the taxpayer's outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Code if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 per cent of the value of the corporation's outstanding stock. The attribution rules of the Code shall apply for purposes of determining whether the ownership requirements of this definition have been met.

(b) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related members.

(c) (i) The adjustments required in subsection (b) shall not apply if: (A) the taxpayer establishes by clear and convincing evidence, as determined by the commissioner, that the adjustments are unreasonable; or (B) the taxpayer and the commissioner agree in writing to the application or use of an alternative method of apportionment under section 42. Nothing in this subsection shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(ii) The adjustments required in subsection (b) shall not apply to the portion of interest expenses and costs and intangible expenses and costs that the taxpayer establishes by a preponderance of the evidence meets both of the following: (A) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member, and (B) the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax that would be otherwise due.

(d) Nothing in this section shall be construed to limit or negate the commissioner's authority to make adjustments under sections 33 and 39A.

Section 31K. (a) For purposes of computing its net income under this chapter, a taxpayer shall add back otherwise deductible interest paid, accrued or incurred to a related member, as defined in section 31J, during the taxable year, except that a deduction shall be permitted when either: (1) the taxpayer establishes by clear and convincing evidence, as determined by the commissioner, that the disallowance of the deduction is unreasonable, or (2) the taxpayer and the commissioner agree in writing to the application of an alternative method of apportionment under section 42. Nothing in this subsection shall be construed to limit or negate the commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(b) The adjustments required in subsection (a) shall not apply if the taxpayer establishes by clear and convincing evidence, as determined by the commissioner, that: (i) a principal purpose of the transaction giving rise to the payment of interest was not to avoid payment of taxes due under this chapter; (ii) the interest is paid pursuant to a contract that reflects an arm's length rate of interest and terms; and (iii) (A) the related member was subject to tax on its net income in this state or another state or possession of the United States or a foreign nation; (B) a measure of said tax included the interest received from the taxpayer; and (C) the rate of tax applied to the interest received by the related member is no less than the statutory rate of tax applied to the taxpayer under this chapter minus three percentage points.

(c) For purposes of subsection (a), interest payments by the taxpayer to a person or entity that is not a related member will be treated as if made to a related member if the interest is paid in connection with a debt incurred to acquire the taxpayer's assets or stock in a transaction that is referenced in section 368 of Internal Revenue Code, as amended and in effect for the taxable year. For purposes of this subsection (c), the provisions of subsection (b) shall not apply.

(d) Nothing in this section shall be construed to limit or negate the commissioner's authority to make adjustments under sections 33 and 39A.

SECTION 11. Said chapter 63, as so appearing, is hereby further amended by striking out section 32D and inserting in place thereof the following:—

Section 32D. Any domestic business corporation or foreign corporation subject to an excise under sections 32 or 39 which is an S corporation or a qualified subchapter S subsidiary, as defined under section 1361 of the Internal Revenue Code, as amended and in effect for the taxable year, shall determine the net income measure of the excise as follows:

(a) Such net income shall be determined by taking into account the provisions of subchapter S of said Code. Income or loss shall be determined as if it were realized or incurred directly by an owner or owners subject to taxation under chapters 62 or 63, as applicable. In the case of an S corporation, income shall be included in the net income measure under this subsection to the extent that such income is taxed to said S corporation for federal income tax purposes. In the case of a qualified subchapter S subsidiary, income shall be included in the net income measure under this subsection to the extent that such income would have been taxed to said subchapter S subsidiary for federal income tax purposes had it been treated as a separate corporation; and

(b) Any such domestic business corporation or foreign corporation which is an S corporation or a qualified subchapter S subsidiary and which has total receipts for the taxable year of \$6,000,000 or more shall also include in the net income measure of the excise imposed under sections 32 or 39 an amount determined by multiplying its net income determined to be taxable in accordance with the provisions of this chapter by one of the following rates, in lieu of the rate provided in such section 32 or 39:

(1) If total receipts for the taxable year are at least \$6,000,000 but less than \$9,000,000, 2.63 per cent; and

(2) If total receipts for the taxable year are \$9,000,000 or more, 3.95 per cent.

For purposes of this subsection, net income determined to be taxable in accordance with the provisions of this chapter shall be determined without taking into account the provisions of subchapter S of said Code, and shall not include income that is taxed to the S corporation or

qualified subchapter S subsidiary at the entity level under subsection (a). "Total receipts" mean gross receipts or sales, less returns and allowances, and includes dividends, interest, royalties, capital gain net income, rental income and all other income. The cost of goods sold or the cost of operations shall not be deductible in determining such total receipts. The commissioner shall, by regulation, apply such limits on an aggregate basis to S corporations engaged in a unitary business with majority direct or indirect ownership by common stockholders. Such aggregating shall also include any other type of entity, including any qualified subchapter S subsidiary, so engaged and so owned which the commissioner finds was established for the purpose of avoiding the foregoing limits.

For purposes of this subsection, in determining the net income of any qualified subchapter S subsidiary, its gross income shall be determined by computing its gross income as defined under the provisions of said Code as if it had been taxed as a separate corporation for federal income tax purposes.

SECTION 12. Section 33 of said chapter 63, as so appearing, is hereby amended by inserting at each of lines 2 and 17 thereof, the words "or parent corporation" after the word "subsidiary".

SECTION 13. Section 33 of said chapter 63, as so appearing, is hereby amended by inserting at each of lines 4 and 6 thereof, the words "or subsidiary" after the words "parent corporation".

SECTION 14. Section 33 of said chapter 63, as so appearing, is hereby amended by inserting, at each of lines 20 and 24 thereof, the words "or subsidiary" after the word "parent".

SECTION 15. Said section 33 of said chapter 63, as so appearing, is hereby further amended by inserting at the end thereof the following:— The provisions of this section shall be broadly construed to include the situation in which the corporations referenced transact with one another through persons or entities that are not corporations within the meaning of this chapter.

SECTION 16. Section 38B of said chapter 63, as so appearing, is hereby amended by adding, at the end thereof, the following subsection:—

(d) Ownership interest in a real estate investment trust which is a related member, as defined in section 31J, shall not be considered a security for the purposes of this section. A real estate investment trust shall have the same meaning as that contained in section 856 of the Internal Revenue Code, as amended and in effect for the taxable year.

SECTION 17. Section 39A of said chapter 63, as so appearing, is hereby amended by inserting at each of lines 2 and 16 thereof, the words "or parent corporation" after the word "subsidiary".

SECTION 18. Said section 39A of said chapter 63, as so appearing, is hereby further amended by inserting at the end thereof the following:— The provisions of this section shall be broadly construed to include the situation in which the corporations referenced transact with one another through persons or entities that are not corporations within the meaning of this chapter.

SECTION 19. In order to maximize the revenues of the commonwealth in fiscal years 2003 and 2004 and notwithstanding the provisions of section 14 of chapter 65 of the General Laws and section 97 of chapter 684 of the acts of 1975, the commissioner of revenue is hereby authorized and directed to accept in full satisfaction of the tax required on future interests under the provisions of said chapter 65, an amount less than would otherwise be required to be paid by strict application of the provisions of said chapter 65. The commissioner shall have the authority and discretion to compromise and settle such future interest liability provided the full amount agreed under said compromise is paid in full no later than December 15, 2003.

The commissioner shall exercise his authority in a manner that will allow the greatest number of taxpayers to pay such future interest liability in advance of the payment date under said chapter 65. No taxpayer who has paid all or any part of the tax due under the provisions of said chapter 65 shall have any claim for an abatement or refund of such which exceeds the amount which could be paid pursuant to this act.

SECTION 20. Section 16D of chapter 118E of the General Laws, as so appearing, is hereby amended by striking out the words "which shall not be less than the same benefits

provided on July 1, 1997 to the eligibility group described in clause (g) of subsection (2) of section 9A".

SECTION 21. Section 16D of said chapter 118E, as so appearing, is hereby amended by inserting at the end thereof the following new subsection:—

(3) Benefits for aliens under this section shall not be provided to persons age 19 or older.

SECTION 22. Said chapter 118E, as so appearing, is hereby amended by inserting after section 16D the following new section:—

Section 16E. The division shall, subject to approval or modification by the secretary in programs where federal funding is available, discontinue enrollment of adults without dependent children in the family applying for benefits under section 9C of this chapter, and of adults and children with family incomes over 133 per cent of the federal poverty level in the programs providing benefits under clauses (c), (e), (h) and (i) of subsection (2) of section 9A of this chapter and under sections 9C, 16, 16A, 16C, and 16D of this chapter. Enrollment shall resume once the division determines that funding is available in one or more of the affected programs.

This section shall be effective for applications submitted on or after March 20, 2003, or after such later date as approved by the secretary.

SECTION 23. Section 21A of said chapter 118E, as so appearing, is hereby amended by striking out subsection (c) and inserting in place thereof the following:—

(c) In making determinations under this section, the division shall revise the community spouse resource allowance as permitted or required by federal law. Either spouse shall have the right to request a fair hearing at which, if it is shown that the income of the community spouse is less than the minimum monthly maintenance needs allowance of the community spouse, the referee shall revise the community spouse resource allowance, using methods permitted or required by federal law, to a level sufficient to generate the shortfall in income. The division shall calculate interest income on the investment of the community spouse resource allowance using the rates reported in the Bank Rate Monitor Index on the date of the hearing.

SECTION 24. Chapter 118G of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following:—

Section 27. (a) For the purposes of this section, the following terms shall have the following meanings:

“Assessment,” the user fee imposed pursuant to this section.

“Intermediate care facility for the mentally retarded,” a privately or publicly operated intermediate care facility for the mentally retarded.

“Community based residence serving individuals,” is a privately or publicly operated community based residence serving individuals with mental retardation that is licensed or certified in accordance with section 15 of chapter 19B of the General Laws.

“Bed day,” a day of residential services provided to an individual with mental retardation by an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation.

(b) Each intermediate care facility for the mentally retarded and each community based residence serving individuals with mental retardation shall pay an assessment per bed day. The assessment shall be imposed on the gross revenue for residential services, received, on a cash basis, for residential services by an intermediate care facility for the mentally retarded or community residence; provided however, the assessment established by the division of health care finance and policy for each fiscal year shall not exceed the maximum rate of assessment that the laws of the United States and/or any rules, regulations, or standards issued under those laws, relating to health care provider assessments will allow without reduction in federal financial participation. The assessment shall be implemented as a broad-based health care related fee as defined in 42 U.S.C. sec. 1396b(w)(3)(B). The assessment shall be paid to the division quarterly. The division may promulgate regulations that authorize the assessment of interest on any unpaid liability at a rate not to exceed an annual rate of 18 per cent and late fees at a rate not to exceed 5 per cent per month. The receipts from the assessment, any federal financial participation received

by the commonwealth as a result of expenditures funded by these assessments, and interest thereon shall be credited to the Health Care Quality Improvement Trust Fund.

(c) The assessments established by this section shall not be collected until the division of medical assistance receives federal assurance of the availability of federal financial participation for MassHealth expenditures funded in part or in whole by revenues collected from said assessments.

(d) The commissioner shall prepare a form on which each intermediate care facility for the mentally retarded and each community based residence serving individuals with mental retardation shall report pursuant to regulations of the department of mental retardation its total bed days and shall calculate the assessment due. The commissioner shall distribute the forms to each intermediate care facility for the mentally retarded and each community based residence serving individuals with mental retardation at least annually. The failure to distribute the form or the failure to receive a copy of the form shall not stay the obligation to pay the assessment by the date specified in this section.

(e) The division shall have the authority to inspect and copy the records of an intermediate care facility for the mentally retarded and for a community based residence serving individuals with mental retardation for purposes of auditing its calculation of the assessment. In the event that the division determines that an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation has either overpaid or underpaid the assessment, the division shall notify the intermediate care facility for the mentally retarded or the community based residence serving individuals with mental retardation of the amount due or refund the overpayment. The division may impose per diem penalties if an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation fails to produce documentation as requested by the division.

(f) In the event that an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation is aggrieved by a decision of the division as to the amount due, the intermediate care facility for the mentally retarded or the

community based residence serving individuals with mental retardation may file an appeal to the division of administrative law appeals within 60 days of the date of the notice of underpayment or the date the notice was received, whichever is later. The division of administrative law appeals shall conduct each appeal as an adjudicatory proceeding pursuant to chapter 30A, and an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation aggrieved by a decision of the division of administrative law appeals shall be entitled to judicial review pursuant to section 14 of said chapter 30A.

(g) The commissioner may enforce the provisions of this section by notifying the department of public health of unpaid assessments. Within 45 days after notice to an intermediate care facility for the mentally retarded or a community based residence serving individuals with mental retardation of amounts due, the department shall take such administrative action as may be appropriate, including the revocation of licensure for failure to remit delinquent fees.

(h) The division, in consultation with the department of mental retardation and the division of medical assistance, shall promulgate regulations necessary to implement this section.

SECTION 25. Chapter 47 of the acts of 1997, as amended by sections 157 and 158 of chapter 300 of the acts of 2002, is hereby amended by striking out section 22 and inserting in place thereof the following:—

Section 22. Notwithstanding the provisions of any general or special law to the contrary, in fiscal years 2003 to 2007, inclusive, the division of health care finance and policy shall allocate \$1,500,000 annually for a Massachusetts Fishermen's Partnership, Inc. demonstration project under subsection (d) of section 18 of the General Laws; provided, however, that such demonstration project otherwise meets the requirements of said subsection (d).

SECTION 26. Section 284 of chapter 194 of the acts of 1998 is hereby repealed.

SECTION 27. Section 403 of chapter 159 of the acts of 2000, as amended, is hereby repealed.

SECTION 28. Item 4000-0300 of section 2 of chapter 184 of the acts of 2002 is hereby amended by inserting after the words "shall be deemed current fiscal year expenditure refunds, so-called;" the following words:—

provided further, that notwithstanding the provisions of any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of recoveries and related expenditures, the division may incur expenses and the comptroller may certify for payment amounts up to the projected total recoveries to be received by June 30, 2003.

SECTION 29. Item 4130-0001 of section 2 of chapter 184 of the acts of 2002 is hereby amended by adding the following words:

General Fund..... 9%
Child Care Development Fund.....91%

SECTION 30. Item 4130-0005 of section 2 of chapter 184 of the acts of 2002 is hereby amended by adding the following words:

General Fund..... 5%
Child Care Development Fund.....95%

SECTION 31. Item 4403-2120 of section 2 of chapter 184 of the acts of 2002 is hereby amended by adding the following words:

General Fund..... 85%
Transitional Aid to Needy Families Fund.....15%

SECTION 32. The preamble of section 2B of chapter 184 of the acts of 2002 is hereby amended by inserting after the words "provided further, that all authorizations in this section shall be charged to the Intragovernmental Service Fund;" the following:—

provided further, that the secretary of administration and finance is hereby authorized to adjust amounts appearing in this section by up to 10 per cent; provided further, that said secretary shall notify the house and senate committees on ways and means 10 days prior to such adjustments;.

SECTION 33. Section 165 of chapter 184 of the acts of 2002, as amended by section 13 of chapter 429 of the acts of 2002, is hereby further amended by striking out clause (a) and inserting in place thereof the following:—

(a) \$15,500,000 shall be credited to the Capital Needs Investment Fund; provided, that \$12,500,000 shall be expended for the purposes of clause (a) of said section 357, of which, not less than \$10,000,000 shall be paid at the beginning of said fiscal year 2003, and not less than \$2,500,000 shall be paid at the middle of said fiscal year 2003.

SECTION 34. Chapter 184 of the acts of 2002, as amended by section 43 of chapter 300 of the acts of 2002, is hereby amended by striking out section 180 and inserting in place thereof the following:—

Section 180. (a) Notwithstanding any general or special law to the contrary, in fiscal year 2003, monies in the Health Care Quality Improvement Trust Fund, established pursuant to section 2EEE of chapter 29 of the General Laws, shall be expended in the following manner:

(1) an amount that will annualize to no more than \$70,000,000 to fund the use of 2000 base year cost information for nursing home rate determination purposes, effective July 1, 2002;

(2) an amount that will annualize to no more than \$129,100,000 for enhanced payment rates to nursing homes, to take effect no sooner than January 1, 2003;

(3) an amount that will annualize to no more than \$50,000,000 to fund a rate add-on, to take effect no sooner than January 1, 2003, for wages, hours and benefits and related employee costs of direct care staff of nursing homes. As a condition for such rate add-on, the division of health care finance and policy shall require that each nursing home document to said division that such funds are spent only on direct care staff by increasing the wages, hours and benefits of direct care staff, increasing the facility's staff-to-patient ratio, or by demonstrably improving the facility's recruitment and retention of nursing staff to provide quality care, which shall include expenditure of funds for nursing homes which document actual nursing spending that is higher than the median nursing cost per management minute in the base year used to calculate Medicaid nursing home rates. The division shall credit wage increases that are over and above any

previously collectively bargained for wage increases. The expenditure of these funds shall be subject to audit by said division in consultation with the department of public health and the division of medical assistance. In implementing this section, the division shall consult with the Nursing Home Advisory Council;

(4) an amount that will annualize to no more than \$12,000,000 to fund rate payments for reasonable capital expenditures by nursing homes that meet quality standards, to take effect no sooner than January 1, 2003;

(5) payment for services provided to MassHealth members by pharmacies participating in MassHealth;

(6) \$60,000,000 to generally fund payments for services provided to MassHealth members by providers participating in MassHealth and other MassHealth expenditures;

(7) \$1,000,000 to fund expenses at the division of health care quality within the department of public health to enforce and improve nursing home quality standards partially funded in item 4510-0710 of section 2 and to support boards of registration being transferred to or serving in the department of public health; and

(8) \$300,000 to fund expenses at the division of health care finance and policy for the implementation and administration of sections 25 and 26 of chapter 118G of the General Laws and for an audit of funds distributed to nursing homes under this section;

(b) The comptroller shall transfer from the Health Care Security Trust Fund to the Health Care Quality Improvement Trust Fund on the first business day of each quarter, the amount indicated by the divisions of health care finance and policy and medical assistance to fund the expenditures described in section (a) herein.

SECTION 35. Section 9 of chapter 236 of the acts of 2002 is hereby amended by striking "Section 2DDD" and inserting in place thereof the following:— Section 2GGG.

SECTION 36. Section 9 of chapter 236 of the acts of 2002 is hereby amended by striking "Section 2EEE" and inserting in place thereof the following:— Section 2HHH.

SECTION 37. Chapter 300 of the acts of 2002 is hereby amended by striking section 46 and inserting in place thereof the following:—

Section 46. Section 2D of chapter 184 of the acts of 2002 is hereby amended by inserting after item 7002-6644 the following item:—

7002-6645 For the purposes of a federally funded grant entitled, Reed Act State Unemployment Trust Distribution, to support the costs of initiatives which will enhance and improve the operations and offerings of the Massachusetts One-Stop Career Center System and proved increased direct benefits to Massachusetts workers and employers; provided, that not more than \$925,000 shall be expended for the operation of the New Perspectives Program, so-called, an effort to provide intensive assessment and counseling services to Massachusetts workers who need assistance in adjusting to career change; provided further, that not more than \$800,000 shall be expended for enhancement to the Massachusetts One-Stop Employment System (MOSES) including, but not limited to, the construction of a relational database, the creation of a capacity for job seekers to conduct intelligent searches of multiple commercial internet-based job banks, and improvements in the services offered to employers in the Massachusetts job bank; provided further, that not less than \$300,000 shall be expended for a comprehensive job vacancy survey; provided further, that not less than \$400,000 shall be expended for the costs associated with integrating existing stand-alone workforce development performance management systems into the MOSES system; and provided further, not more that \$2,000,000 shall be expended for the Massachusetts One-Stop Career Centers; and provided further that all funds appropriated under this line item must be expended within two years of the enactment of this Act \$4,425,000

SECTION 38. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance shall not pay a nursing facility for reserving a bed for residents receiving benefits under chapter 118E of the General Laws who are absent from the facility on so-called medical leaves of absence and non-medical leaves of absence.

SECTION 39. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance, in cooperation with the division of health care finance and policy where applicable, shall, in an effort to address the fiscal emergency faced by the commonwealth, reduce rates of payment to certain providers participating in MassHealth, provided that any such rate reduction shall be consistent with applicable federal requirements.

The division of medical assistance, in cooperation with the division of health care finance and policy where applicable, shall, as of that effective date, initiate any action necessary to implement the provisions of this section as soon thereafter as possible.

SECTION 40. Notwithstanding the provisions of any general or special law to the contrary, the division of medical assistance may transfer funds among items 4000-0430, 4000-0500, 4000-0600, 4000-0700, 4000-0860, 4000-0870, 4000-0880, 4000-0890, 4000-0891, and 4000-1400 of section 2 of chapter 184 of the acts of 2002; provided, that any such transfer shall take place no later than June 30, 2003.

SECTION 41. Notwithstanding the provisions of any general or special law to the contrary, not later than 10 days after the effective date of this act, the comptroller shall transfer \$1,500,000 from the Uncompensated Care Trust Fund to the General Fund.

SECTION 42. Notwithstanding the provisions of any general or special law to the contrary, monies in the Health Care Quality Improvement Trust Fund, established pursuant to section 2EEE of chapter 29 of the General Laws, shall be expended to include an amount that will annualize to no more than \$28,000,000 for enhanced payment rates to intermediate care facilities for the mentally retarded and for community based residences serving individuals with mental retardation.

SECTION 43. Notwithstanding the provisions of any general or special law to the contrary, during fiscal year 2003, at the direction of the secretary of administration and finance, the comptroller shall transfer to the General Fund from budgeted funds other than the General Fund, Highway Fund, and Local Aid Fund, an amount equal to allotment reductions made in appropriation items charged to said other budgeted funds pursuant to section 9C of chapter 29 of the General Laws.

SECTION 44. Notwithstanding the provisions of any general or special law to the contrary, the comptroller shall, at the direction of the secretary of administration and finance, first, transfer any positive balance in the Caseload Increase Mitigation Fund, second, the Health Protection Fund to the General Fund; provided further, the comptroller shall, at the direction of the secretary of administration and finance, transfer from the Commonwealth Stabilization Fund to the General Fund, an amount necessary to end the fiscal year with a consolidated net surplus equal to one-half of one per cent of the total revenue from taxes.

SECTION 45. The commissioner shall publish any rules and regulations necessary for the implementation of section 19 within 30 days of the passage of this act.

SECTION 46. Notwithstanding the provisions of any general or special law to the contrary, not later than 10 days after the effective date of this act, the comptroller shall transfer \$12,000,000 from the Workforce Training Fund, established in section 2RR of chapter 29 of the General Laws, to the General Fund.

SECTION 48. Notwithstanding the provisions of any general or special law to the contrary, the commonwealth's share of the group insurance premium for state employees who have retired prior to July 1, 1994, shall be 75 per cent, and the commonwealth's share of the group insurance premium for state employees who have retired on or after July 1, 1994 shall be 75 per cent; provided further, that the commonwealth's share of such premiums for active state employees shall be 75 per cent of said premiums and rates; and provided further, that the provisions of this section shall not apply to retirees who are both over age 65 and have annual income less than 133 per cent of the federal poverty level.

SECTION 49. Notwithstanding the provisions of any general or special law to the contrary, not later than 10 days after the effective date of this act, the comptroller shall transfer the balance of the Clean Elections Judgment Fund, established pursuant to subsection (b) of section 174 of chapter 184 of the acts of 2002, to the General Fund.

SECTION 50. Notwithstanding the provisions of any general or special law to the contrary, any private entity determined by the secretary of public safety to be engaged in the transport or storage of hazardous cargo and materials within the boundaries and waterways of the commonwealth, including, but not limited to, the transport or storage of liquefied natural gas, shall be responsible for 80 per cent of the costs associated with safeguarding public safety in the surrounding communities. Twenty per cent of said costs shall be borne by the community or government entity responsible for said public safety details. All costs incurred shall be billed retroactive to July 1, 2002. Funds shall be deposited into an expendable trust and all expenditures from said trust shall not be subject to fringe and indirect costs. All reimbursements shall be distributed at the discretion of the secretary of public safety.

SECTION 51. The provisions of sections 7, 8 and 9 of this act shall be effective with tax years ending on or after December 31, 1999. The provisions of sections 6, 10 through 15, inclusive, and 17 through 19, inclusive, shall be in effect for tax years 2002 and later. Section 16 shall take effect July 1, 2002. Sections 24, 42 and 48 shall take effect April 1, 2003. The remainder of this act shall take effect upon passage.